

HENRY P. RHATIGAN
v.
MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 91-50-A

Decided March 20, 1992

Appeal from the refusal to recognize the results of a tribal election.

Affirmed.

1. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances--Indians: Tribal Powers: Tribal Sovereignty

In furthering the doctrines of tribal sovereignty and self-determination, the Department of the Interior has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

2. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances

Article X of the Constitution of the Seneca-Cayuga Tribe of Oklahoma gives the Grievance Committee the power to investigate complaints of misconduct or other acts by the Business Committee, and call a special meeting of the Seneca-Cayuga Council to act upon such complaints if a proper showing is made.

APPEARANCES: Henry P. Rhatigan, pro se.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

Appellant Henry P. Rhatigan seeks review of a January 17, 1991, decision of the Muskogee Area Director, Bureau of Indian Affairs (BIA; Area Director), refusing to recognize the results of an election held at a January 12, 1991, meeting of the General Council of the Seneca-Cayuga Tribe of Oklahoma (Tribe). For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

Background

In late 1990, two tribal employees were investigated for possible misconduct in connection with their tribal employment. The employees were dismissed from their positions, but later reinstated.

On November 13, 1990, a petition signed by 71 tribal members was presented to both the tribal Chief and the Chairman of the tribal Grievance Committee. ^{1/} The petition read:

We, the undersigned Tribal members of the Seneca-Cayuga Tribe of Oklahoma, do hereby respectfully submit this Petition to you and request a General Council [^{2/}] meeting of the people be called * * * for the purpose of informing all members present at said meeting as to why [the employees] were terminated from their employment in the tribal office, and that we be afforded the opportunity of reviewing for ourselves all of the supporting documents calling for their dismissal.

Further, we feel that, as elected officials of the Tribe, the Business Committee is accountable to us for their action in Tribal affairs. That if they cannot show just cause as to why they reinstated [the employees] to their jobs, we ask for their resignation and/or recall, along with final termination of the aforementioned employees.

In response to the petition, the Chief called a special meeting of the General Council on January 12, 1991 (January 12 meeting). Discussion at the meeting was apparently quite heated. The Chief attempted to adjourn the meeting, and many tribal members appear to have left the meeting with the Chief. Ultimately, the tribal members remaining at the meeting voted to recall the entire Business Committee, and elected new members.

Faced with two competing tribal governments, BIA took steps to determine which tribal government it would recognize for purposes of discharging its government-to-government relationship with the Tribe. This effort included an analysis of the tribal Constitution and By-Laws. On January 17, 1991, the Area Director issued the memorandum which is the basis for the present appeal. The memorandum states at pages 2-3:

^{1/} The Grievance Committee is established by Article VII, sec. 1, of the tribal Constitution, which reads: "Grievance Committee -- This Committee shall be elected by the Council and shall not include any members of the Business Committee." (Emphasis in original.) The Business Committee is established by Article VI of the Constitution, which provides in pertinent part: "The Business Committee shall have power to transact business and otherwise speak or act on behalf of the Seneca-Cayuga Tribe in all matters on which the Tribe is empowered to act." (Footnote omitted.) Under Article V of the tribal Constitution, the Chief is one of the members of the Business Committee.

^{2/} Article IV of the tribal Constitution provides that "[t]he supreme governing body of the Tribe shall be the Seneca-Cayuga General Council. The membership of the General Council shall be all members of the Seneca-Cayuga Tribe of Oklahoma eighteen (18) years of age and older." (Footnotes omitted.)

Article III, Section 2 and 3 of the By Laws, which By-Laws are a part of the constitution of the Seneca-Cayuga Tribe of Oklahoma, reads:

Section 2. Special meetings of the council may be called at the discretion of the Chief, and shall be called by him upon the written request of the majority of the Business Committee or the written request of 30 members of the tribe.

Section 3. The principal object of the special meeting must be stated in the call for the same and may include the words "and for the transaction of other business that may be presented." Unless these words are added, no other business can be transacted except for the object stated in the call.

Article X of the Seneca-Cayuga Tribe of Oklahoma's constitution reads as follows: "The Grievance Committee shall investigate complaints of misconduct or other acts of the members of the Business Committee and upon a proper showing shall call a special meeting of the Seneca-Cayuga Council to act upon such complaints. Such council shall have power, by majority vote, after giving the accused a hearing, to remove him from office and proceed to elect a successor."

The purpose of the meeting stated in the petition was to discuss rehiring of the tribal employees and was apparently properly handled by the Chief by calling a meeting of the General Council upon his receipt of a petition signed by at least 30 members of the tribe. This authority derives from Article III, Section 2, of the By-Laws.

However, insofar as the petition purports to also serve as notice of the recall of the Business Committee officials for misconduct, that extraordinary power has been pre-empted by Article X of the constitution. It is the Grievance Committee who has the power to call a special meeting of the Seneca-Cayuga Council to act upon such complaints. In order to recall Business Committee members, this action could only be taken at a meeting called by the Grievance Committee, and only after the accused were given a hearing. Therefore, I find that the General Council members in attendance at the January 12, 1991, special meeting called by the Chief of the Seneca-Cayuga Tribe lacked authority pursuant to Article X of the Seneca-Cayuga Constitution to recall any of the Business Committee members by vote. I therefore, do not recognize the action taken at this meeting which includes the election of new Business Committee members. [Emphasis in original.]

The Board received appellant's notice of appeal from this decision on February 19, 1991. The Board noted that appellant had been elected tribal secretary-treasurer at the January 12 meeting and therefore appeared to have standing to bring this appeal under Sundberg v. Acting Sacramento Area Director, 18 IBIA 207, 210 (1990). The Area Director did not dispute this conclusion. Only appellant filed a brief on appeal. 3/

Discussion and Conclusions

Much of appellant's opening brief addresses the history leading up to the January 12 meeting. Although informative, this history is not relevant to a determination of whether the recall vote and election of new Business Committee members were proper. Therefore, the Board will not discuss this history.

Appellant raises several legal arguments against the Area Director's conclusion that the recall vote and election of new Business Committee members at the January 12 meeting was improper. Appellant contends: (1) the petition was submitted to the Chairman of the Grievance Committee, thus meeting the requirements of Article X of the tribal Constitution; (2) the Grievance Committee was arbitrary and capricious in failing to act on the petition for 8 weeks; (3) the agenda for the meeting, i.e., the petition, clearly indicated that a recall vote and election of new Business Committee members was to be considered at the special meeting; (4) the Area Director violated Articles II, IV, and XII of the tribal Constitution in issuing this decision; 4/ and (5) basing a decision on Article X of the tribal Constitution does not promote the general welfare of the Tribe mandated by Article II of the Constitution. Appellant concludes that "no BIA official has the authority and jurisdiction to overrule our General Council Meeting. The BIA is also acting in an arbitrary and capricious manner by ignoring other important components of our Constitution" (Opening Brief at 3).

[1] The Board has previously discussed the role of the Department of the Interior regarding the recognition of tribal governments. It has held that, under the doctrines of tribal sovereignty and self-determination, a tribe has the right initially to interpret its own governing documents in resolving internal disputes, and the Department must give deference to a tribe's reasonable interpretation of its own laws. However, the Board has also held that the Department has both the authority and the responsibility to interpret tribal law when necessary to carry out the government-to

3/ The Area Director included a cover memorandum with the administrative record. Because it does not appear that this memorandum was served on the other parties, the memorandum has not been considered in reaching this decision.

4/ Article II states: "The object [of the Tribe] shall be to promote the general welfare of the Seneca-Cayuga Tribe of Oklahoma."

Article IV is set out in note 2, supra.

Article XII states in pertinent part: "No member shall be denied * * * the right to petition for action or the redress of grievances."

government relationship with the tribe. See, e.g., Reese v. Minneapolis Area Director, 17 IBIA 169 (1989), and cases cited therein. For this reason, the Board rejects appellant's argument that BIA lacked authority and jurisdiction to interpret the tribal Constitution.

Appellant argues that the Grievance Committee was given an opportunity to act, but failed to do so. This argument suggests that appellant believes that the Grievance Committee's failure to act gave him and/or other tribal members authority to deal with this dispute on their own, outside of established tribal procedures.

[2] Article X of the tribal Constitution, quoted supra, gives the Grievance Committee the power to investigate complaints of misconduct or other acts by the Business Committee, and call a special meeting of the Seneca-Cayuga Council (presumably the General Council) to act upon such complaints if a proper showing is made. The Council then has the power, by majority vote and after giving the accused a hearing, to remove a member of the Business Committee and elect a successor.

The procedures established in the Constitution are designed to allow the reasoned and orderly consideration of allegations against Business Committee members. It provides due process (guaranteed to all tribal members under Article XII of the tribal Constitution) to the accused member(s) of the Business Committee, while acknowledging the right of the tribal members to choose their elected representatives.

The tribal Constitution provides no procedure for bypassing the Grievance Committee because some tribal members believe the Committee has not done its job or has not done its job properly. Under the Constitution, only the Grievance Committee can call a meeting to consider the recall of Business Committee members. The January 12 meeting was not called by the Grievance Committee. Therefore, a recall vote was not proper at that meeting. 5/

Because of this holding, the fact that the petition mentioned the possibility of a recall vote and election of new Business Committee members is irrelevant. The January 12 meeting was called only by the Chief. The Chief did not have the authority to act for the Grievance Committee. Article VII, section 1, of the tribal Constitution clearly states that the Grievance Committee shall not include any members of the Business Committee.

5/ It is possible that the Grievance Committee believed that action on its part was premature before the Jan. 12 meeting. The petition states that the purpose of the special meeting was to inform the tribal members of the reason(s) the two tribal employees were dismissed from their employment, and to allow the tribal members to review any documentation concerning their dismissals. The Grievance Committee could reasonably have believed that it should not take any action until after the Jan. 12 meeting, when it would be determined whether the explanations given satisfactorily resolved the concerns of the tribal members. If the Jan. 12 meeting resolved the matter, there would be no necessity for further action by the Grievance Committee.

Appellant also contends that the Area Director's decision violated Articles II, IV, and XII of the tribal Constitution. Briefly, the Area Director must consider the interests of the entire tribe in determining what government he will recognize. The fact that his decision may not comport with appellant's personal opinion of what action will best promote the general welfare of the Tribe is not determinative. Appellant, as do all members of the Tribe, still retains the right to petition for action or redress of grievances. He has been accorded that right through the calling of the January 12 meeting. The fact that the ultimate outcome of the meeting was not to appellant's satisfaction does not mean that appellant's right to petition has been abridged. Finally, although the supreme governing body of the Tribe is the General Council, the General Council, through the enactment of the Constitution, has limited some of its powers by delegating those powers to certain elected representatives and elected and appointed committees. The fact that the General Council is the supreme governing body does not give it the authority to violate the tribal Constitution.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the January 17, 1991, decision of the Muskogee Area Director is affirmed.

Kathryn A. Lynn
Chief Administrative Judge

I concur:

Anita Vogt
Administrative Judge